

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 06, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ADEN SEAN MULLEN,

Plaintiff,

v.

WASHINGTON STATE DOC,

WASHINGTON STATE

PENITENTIARY, DON HOLBROOK,

THURSTON COUNTY SUPERIOR

COURT, KELLY WALKER, R.

RANDOLPH and COUNSELOR HILL,

Defendants.

4:20-CV-05069-SAB

**ORDER DISMISSING
COMPLAINT**

By Order filed July 28, 2020, the Court advised Plaintiff of the deficiencies of his complaint and provided him with an opportunity to voluntarily dismiss within sixty (60) days. ECF No. 12. Plaintiff, a prisoner at the Washington State Penitentiary (“WSP”), is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

In the Order, the Court found that Plaintiff’s civil rights action is subject to dismissal as the relief Plaintiff seeks sounds in habeas. ECF No. 12 at 5. Although granted the opportunity to do so, Plaintiff has not filed a Motion to Voluntarily

ORDER DISMISSING COMPLAINT -- 1

1 Dismiss and a separate Affidavit (or declaration under penalty of Perjury) and
2 Motion to waive collection of the remaining balance of the filing fee. The Court
3 had cautioned Plaintiff that the failure to file these documents within sixty (60)
4 days of the date of the Order would result in the dismissal of this action and the
5 continuing obligation to pay the full filing fee of \$350.00. *Id.* at 5–6.

6 For the reasons set forth above and in the Order Granting Opportunity to
7 Voluntarily Dismiss Complaint, ECF No. 12, the Complaint is subject to dismissal
8 for failure to state a claim upon which relief may be granted. 28 U.S.C. §§
9 1915(e)(2) and 1915A(b)(1).

10 Accordingly, **IT IS HEREBY ORDERED:**

- 11 **1.** The Complaint, **ECF No. 1**, is **DISMISSED without prejudice** for
12 failure to state a claim upon which relief may be granted. 28 U.S.C. §§
13 1915(e)(2) and 1915A(b)(1).
- 14 **2.** Based on the Court’s reading of *Washington v. Los Angeles Cty. Sheriff’s*
15 *Dep’t*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will NOT count as a
16 “strike” under 28 U.S.C. § 1915(g).
- 17 **3.** The Clerk’s Office is directed to **ENTER JUDGMENT** and **CLOSE**
18 this file.

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1 **4.** The Court certifies that any appeal of this dismissal would not be taken in
2 good faith.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
4 provide copies of this Order and the Judgment to Plaintiff at his last known
5 address.

6 **DATED** this 6th day of October 2020.



10 *Stanley A. Bastian*

11 Stanley A. Bastian
12 United States District Judge
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